

STORAGE NAME: h0157s1.ccc.doc

DATE: April 9, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL ON COMPETITIVE COMMERCE
ANALYSIS**

BILL #: CS/HB 157

RELATING TO: Motor vehicle airbags

SPONSOR(S): Council for Competitive Commerce and Representative(s) Weissman and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 8 NAYS 0
 - (2) TRANSPORTATION YEAS 13 NAYS 0 (RIC)
 - (3) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0 (HCC)
 - (4) COUNCIL ON COMPETITIVE COMMERCE YEAS 11 NAYS 0
 - (5)
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I. SUMMARY:

Currently, s. 860.145, F.S., also known as the "Airbag Antitheft Act," specifies recordkeeping requirements for persons engaged in the business of purchasing, selling, or installing salvaged airbags. It also specifies penalties for persons who knowingly possess, sell, or install a stolen airbag, and persons who violate the recordkeeping requirements.

The committee substitute creates s. 860.146, F.S., and makes it a second-degree felony to install any object other than a new or salvaged airbag that was designed for the make, model, and year of the vehicle. This will prohibit the installation of a "fake airbag" and prohibit the installation of an airbag that was not designed for the car in which it is being installed. It incorporates the pertinent provisions of s. 860.145, F.S., by reference.

The bill, as filed, duplicated much of the language contained in s. 860.145, F.S. See section IV. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES for details.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

HB 157 expands government regulations by requiring persons selling, replacing, or installing salvaged airbags to implement and maintain a variety of record-keeping procedures.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Since 1998, federal law has required all newly manufactured cars and trucks to have driver and front passenger airbags. By the year 2010, ninety percent of all vehicles will be equipped with airbags.

Airbags are not reusable. Thus, if an airbag is deployed in an accident, it must be replaced. Airbag replacement costs range from \$400 to \$1,500. The expense has created a market for "used" or "salvaged" airbags (those not deployed, but still serviceable) from wrecked cars. Within the past several years, it has become increasingly popular among thieves to steal airbags for resale purposes. A 1996 study by State Farm Insurance showed that 18 out of every 10,000 cars were broken into and their airbags stolen – nearly triple the number reported stolen in 1993. Additionally, the National Highway Loss Data Institute reported that approximately 10 percent of all auto-theft claims are for air-bag thefts.

Another problem is installation of fake or dummy airbags. Investigations by the Los Angeles Police Department have discovered auto repair shops installing dummy air bags as replacements for deployed airbags. These dummy airbags are stuffed with anything from socks to shredded newspaper to Styrofoam, giving them the weight and feel of a real air bag. These fake airbags are then sewn back into the steering column. According to the Florida Auto Theft Journal, dummy airbags also are becoming a problem in Florida. The state Department of Agriculture and Consumer Services has investigated two complaints since 1999 about fraudulent airbag installations, but these cases were handled as insurance fraud. There appears to be no further data about the extent of the problem in Florida.

The manufacturer labels each airbag with a unique serial number distinguishing it from every other airbag. When the serial number is entered into the National Crime Information Center computer system, it becomes possible for persons suspecting an airbag is stolen to find out by checking with their local police agency.

In response to the trend in airbag thefts, the Legislature in 1999 passed HB 79 (chapter 99-170, Laws of Florida) that created section 860.145, F.S. Described as the "Airbag Antitheft Act," the legislation included: 1) definitions of the terms "airbag" and "salvaged airbag" 2) recordkeeping

requirements for persons who are in the business of purchasing, selling, or installing airbags; 3) a requirement that the records be maintained for 36 months and a provision that allowed the records to be inspected during normal business hours by any law enforcement officer; 4) a requirement that any person who sells or installs a salvaged airbag disclose to the purchaser or consumer that the airbag is salvaged. The law makes it a third-degree felony to knowingly possess, sell, or install a stolen airbag; install a new airbag from which the manufacturer's part identification number has been removed, altered or replaced; or install an airbag taken from a stolen car. It is a first-degree misdemeanor to fail to maintain complete and accurate records, fail to provide information upon request, and fail to disclose that an airbag is salvaged.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 157 creates s.860.146, F.S. making it a second-degree felony to install any object other than a new or salvaged airbag that was designed for the make, model, and year of the vehicle. A second-degree felony is punishable by up to fifteen years in prison and a \$10,000 fine. The bill does not rank the offense in the Offense Severity Ranking Chart of the Criminal Punishment Code and it will therefore default as a Level Four offense. Pursuant to this ranking, a person convicted of this crime could receive a sentence ranging from probation to 15 years imprisonment.

Additionally, the committee substitute applies the provisions in s. 860.145(2), (3), and (4)(b) to this new law, by reference. Therefore, this bill also has the effect of:

1. Defining an airbag as "an inflatable restraint system that is designed to be installed and to operate in a motor vehicle to activate in the event of a crash" and defining a salvaged airbag as an airbag "which has been removed from a motor vehicle."
2. Requiring any person engaged in the business of purchasing, selling, or installing salvaged airbags to maintain a manual or electronic record of the purchase, sale, or installation of airbags and other specific information. The businessperson must maintain the record for 36 months following the transaction and allow law enforcement officers to inspect the information during normal business hours. Any person who sells a salvaged airbag must disclose to the purchaser that the airbag is salvaged.
3. Failing to comply with these recordkeeping requirements is a first-degree misdemeanor, punishable by a maximum one year in prison and a \$1,000 fine.

D. SECTION-BY-SECTION ANALYSIS:

Please see Section C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Please see Fiscal Comments.

2. Expenditures:

Please see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Please see Fiscal Comments.

2. Expenditures:

Please see Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

CS/HB 157 requires persons selling, replacing, or installing salvaged airbags to implement and maintain new record-keeping procedures.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference determined the bill does not have a fiscal impact on state or local governments.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

CS/HB 157 is exempt from the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

CS/HB 157 does not reduce the authority that municipalities or counties have to raise the revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

CS/HB 157 does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill, by reference, would make applicable to this new section most of the provisions currently in s. 860.145, F.S., which allows a law enforcement officer to inspect records of a person engaged in the business of purchasing, selling, or installing salvaged airbags during normal business hours. Generally, the Fourth Amendment to the United States Constitution prohibits searches of people or property without a search warrant. One exception to this requirement is known as a warrantless administrative search. In Moore v. State, 442 So.2d 215 (Fla. 1983), the Florida Supreme Court upheld the constitutionality of s. 812.055, F.S., which allows a law enforcement officer to inspect any junkyard, scrap metal processing plant, motor vehicle salvage yard, licensed motor vehicle dealer's lot, motor vehicle repair shop, parking lot or public garage, for the purpose of locating stolen vehicles, investigating the titling and registration of vehicles, inspecting vehicles or inspecting records.

In conducting its analysis, the Florida Supreme Court stated:

[W]arrantless administrative searches of business property are not automatically unreasonable because the "interest of the owner of commercial property is not one in being free from any inspections. " To withstand challenge, however, the statute allowing such searches must not allow unbridled discretion and the searches must be of a pervasively regulated business so that the business owner is aware that his property is subject to inspection.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The new s. 860.146, F.S., would create a separate, specific statute relating to the installation or reinstallation of airbags, as opposed to the existing s. 860.145, F.S., which deals with the purchase, sale, or installation of salvaged airbags. In addition, s. 860.145, F.S., is entitled the "Airbag Antitheft Act."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 7, 2001, the Transportation Committee adopted without objection a strike everything amendment filed by the bill sponsor. The amendment incorporates by reference into HB 157 the airbag definitions, recordkeeping requirements and penalty provisions in s. 860.145, F.S. The amendment provides that it is a second degree felony for any person to install or reinstall in a motor vehicle any object in lieu of a new or salvaged airbag that was designed in accordance with federal safety standards for the make, model and year of that vehicle, as part of a motor vehicle inflatable restraint system. This will prohibit the installation of a "fake airbag" and prohibit the installation of an airbag that was not designed for the car in which it is being installed. The amendment traveled with the bill.

On April 5, 2001, the Council for Competitive Commerce passed the bill as a committee substitute incorporating the "strike-everything" amendment adopted by the Transportation Committee.

Difference between the committee substitute and the bill, as filed: The original bill made it a second-degree felony to replace a defective or deployed airbag with anything other than a new or salvaged airbag made for the particular vehicle. It then duplicated the existing language in s. 860.145, F.S., except for including the penalty provisions relating to recordkeeping. The CS makes specific provisions in s. 860.145 apply by reference, and makes it a second-degree felony to install anything other than the appropriate airbag.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

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Susan D. Reese

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COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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